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DOUGLAS G GLANTZ
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5260 DEBORAH COURT
DOYLESTOWN, PA 18901

EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 05/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/896,307

Applicant(s)

BROOKS, JO ANN

Examiner

Norca L. Torres-Velazquez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
or Reply

SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
MAILING DATE OF THIS COMMUNICATION.

Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
more than SIX (6) MONTHS from the mailing date of this communication.

If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.

If the period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.

Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

A reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
available patent term adjustment. See 37 CFR 1.704(b).

Responsive to communication(s) filed on 20 September 2001.

This action is **FINAL**.

2b) ☒ This action is non-final.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

Claim(s) 1-24 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-24 is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) _____ are subject to restriction and/or election requirement.

Disposition of Papers

The specification is objected to by the Examiner.

The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

The oath or declaration is objected to by the Examiner.

Under 35 U.S.C. §§ 119 and 120

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

See the attached detailed Office action for a list of the certified copies not received.

Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

) ☐ The translation of the foreign language provisional application has been received.

Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

Number of References Cited (PTO-892)

Number of Draftsperson's Patent Drawing Review (PTO-948)

Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.

4) ☐ Interview Summary (PTO-413) Paper No(s). _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claim 23 drawn to a method of using has been rejoined.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 9 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification discloses the use of an insulating polyacryamide [polyacrylamide?] gel liner or gelled PVP with added inorganic salts, but does not disclose the use of "heat retentive insulating packaging components consisting of a high density polyethylene thin film containing metal salts". The specification teaches using gel liners and the claim~~s~~ use a film. (see page 7 of the specification).

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

5. Claim 23 provides for the use of a wash cloth by warming it, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 23 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

6. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4 recites the limitation "basesheet material" in line 2. There is insufficient antecedent basis for this limitation in the claim.

7. Claims 18 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These are improper Markush claims.

8. Claims 1-22 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The terms "thermoretentive polymer", "thermoretentive mixtures of low to mid-melting point organic waxes", "thermoretentive lipids" and "thermoretentive wax" in claims 1-24 are relative terms, which render the claims indefinite. The term "thermoretentive" is not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. The specification only talks about the present invention retaining warmth for three (3) times longer than conventional cleansing solutions which contain a predominance of water. (Page 6,

first paragraph). However, it does not provide a standard of how long the conventional cleansing cloths hold the warmth. No results are provided that will show that the present invention provides the specific benefit over comparable products of the prior art.

While the Applicant list several compounds that could be used in the oil phase of the oil-in-water emulsion described in the specification, the disclosure fails to identify which ones are the "specific oil soluble thermoretentive polymers" of the present invention. (Refer to page 7 of the specification)

9. Claim 5 contains the trademark/trade name Dow Corning 580 Wax. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe stearoxytrimethylsilane (and) stearyl alcohol and, accordingly, the identification/description is indefinite.

10. Claim 13 recites the limitation "thermoconducting polymer" in line 2. There is insufficient antecedent basis for this limitation in the claim.

11. The terms "low to mid-melting point organic waxes", "mid to high melting point waxes" in claims 1, 12 and 14 are relative terms which render the claims indefinite. The terms "low, mid and high-melting point" are not defined by the claims, the specification does not provide a

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standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Applicant has not stated the low and high-end values that define the melting points of the components recited.

12. Claims 16 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear what is meant by “to form substantitively to keratin materials”. Applicant has not described what is “ion tolerance” in the context of the present invention.

13. Claim 21 contains the trademark/trade name Penreco Versagel. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe mineral oil and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 1-22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over PONSI et al. (US 5,906,278) in view of McATEE et al. (US 6,153,208).

PONSI et al. teaches a patient bathing system that includes impregnated washcloths that absorb microwave energy so that the contents of the package (of the bathing system) can be warmed while heat is retained by an insulating layer. (Abstract) The reference teaches that the washcloths are impregnated with a cleansing solution and the washcloths are preferably nonwoven. (Column 1, lines 60-64) The reference teaches that the outer package and the insulating and supporting layer of their invention are preferably made of materials generally impervious to microwave energy. On the other hand, the cleansing solution with which the washcloths are impregnated is preferably, a fluid that is generally absorptive of microwave energy. Accordingly, if the patient bathing system according to the invention is placed in a microwave oven, the cleansing solution is heated, and the insulating and supporting layer, being insulative, helps retain that heat within the outer package. (Column 2, lines 23-30)

PONSI et al. further teaches that the insulating and supporting layer of their invention is made of a material that is generally transparent to microwave energy. (Column 4, lines 14-16) It is noted that high density polyethylene is known for being transparent to microwave energy.

The PONSI et al. reference teaches nonwoven washcloths with a fluid that is absorptive of microwave energy (that is equivalent in scope to the thermoretentive components of the present invention). However, the reference fails to explicitly disclose the thermoretentive components or the structure of the nonwoven material. Also, PONSI et al. does not teach that the nonwoven comprises rayon and polyester needle-punched.

McATEE et al. discloses a disposable personal cleaning article and teaches the use of nonwoven substrates made from synthetic materials such as an apertured hydroentangled material containing about 50% rayon and 50% polyester, and carded hydroentangled material, containing a fiber composition of from 50% rayon/50% polyester. The reference teaches materials that can have a basis weight up to 115 gsy [4.01 ounces per yard squared]. (Refer to column 14, lines 54-67 through column 15, lines 1-46)

It is noted that hydroentanglement is an equivalent mechanical entanglement process to needle-punching. Therefore, it would have been obvious to have needled the nonwoven of McATEE rather than hydroentangling it, because needling was known as equivalent means of mechanically bonding nonwovens.

The reference teaches that the conditioning component of their invention may comprise a conditioning emulsion that is useful for providing a conditioning benefit to the skin during the use of the article. (Column 28, lines 63-67). The term "conditioning emulsion" means the combination of an internal phase comprising a water soluble conditioning agent that is enveloped by an external phase comprising an oil soluble agent. In preferred embodiments, the conditioning emulsion would further comprise an emulsifier. The conditioning emulsion comprises from about 0.25% to about 150%, by weight of the water insoluble substrate. (Column 29, lines 1-8)

The McATEE et al. reference teaches several compound that could be used in the conditioning emulsion of their invention.

With regards to claim 6, the use of caprylic/capric triglyceride is taught by the reference. (Column 26, lines 31-52)

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With regards to claims 3, 16 and 17, the reference teaches the use of acrylates/C10-30 alkyl acrylate crosspolymer and also the use of PVP/Eicosene copolymer. (Column 40, lines 32-34)

With regards to claim 15, the reference teaches the use of emulsifiers that are oil soluble or miscible with the oil soluble external phase materials of their conditioning emulsions. (Refer to Column 29, lines 66-67 – Column 30, lines 1-27)

With regards to claim 18, the reference teaches the use of xanthan gum. (Column 36, lines 29-41)

The reference also teaches the use of conditioning components from the group consisting of glycerin monoesters, glycerin polyesters, silicone oil, silicone gum, vegetable oil, natural waxes and synthetic waxes. (Refer to claim 8) The reference also teaches the use of mineral oil, stearyl alcohol, candelilla wax, silicone waxes. (Refer to claim 10) On paragraph 28, line 48; the reference also teaches the use of propylene glycol. Suitable fatty acid ester for use in their invention include ester waxes, monoglycerides, diglycerides and triglycerides. For example, beeswax. (Column 32, lines 49-55)

With regards to claim 12, ceresin wax is a mineral wax with a melting point from 61 to 78 degrees Fahrenheit. It is used as a substitute for Beeswax or Paraffin wax. It is known to be used in cosmetic creams.

Since both references are from the same field of endeavor, disposable personal cleaning cloths, the purpose disclosed by McATEE et al. would have been recognized in the pertinent art of PONSI et al. It is noted that while the McATEE et al.'s invention is directed to a personal cleaning article that needs to be wetted before using, the use of the formulations listed above

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would be recognized in the art of PONSI et al. since they will provide the cleaning and conditioning benefits to the consumer upon being in solution once wetted.

It is further noted that the McATEE et al. reference teaches the use of components that would read on the "thermoretentive polymer" and the "thermoretentive organic waxes" of the present invention. The property of retaining heat or conducting heat in a formulation is inherent to the physical properties of the compounds constituting it, the fact that the McATEE et al. does not teach that these compounds are used in their invention for their "thermoretentive or thermoconductive" properties does not change the physical nature of these compounds.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the PONSI et al. reference and provide it with the components taught by McATEE et al. with the motivation of providing the washcloth with a cleansing formulation that satisfy a number of criteria that is acceptable to consumers, including cleansing effectiveness, skin feel and mildness to skin as disclosed by McATEE et al. (Column 1, lines 51-55)

16. Claims 1-22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over SKIBA et al. (US 5,956,794) in view of PONSI et al. (US 5,906,278).

SKIBA et al. discloses a patient bathing system having at least one disposable washcloth for body cleansing. The washcloth comprises a blended cloth comprising first fibers and second fibers, with the fibers being blended by mechanical entanglement. (Column 1, lines 5-8 and lines 40-44) The reference teaches that in the preferred form of the invention, the first fibers comprise rayon and the second fibers comprise polyester. The rayon fibers are about 1.5 denier and about 1.5 inches in length, while the polyester fibers are about 4.75 denier and about 3 inches in length.

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The quantity of the rayon fibers comprises about 70% by weight, while the quantity of the polyester fibers comprises about 30% by weight. The fibers are in a concentration of from about 4.3 ounces per square yard to about 5.3 ounces per square yarn for an average thickness of the blended cloth being 0.090 ounces. (Column 1, lines 51-67) The rayon and polyester fibers are blended by mechanical entanglement, such as needle punching. (Column 3, lines 7-9)

The reference further teaches that the washcloths are impregnated with cleansing solution preferably composed of water, cleansing agents and moisturizing agents. Preferably, the cleansing agents comprise surfactants and the moisturizing agents comprise humectants. (Column 2, lines 6-9) The reference also discloses that because the solution is intended to be a non-rinse solution, the primary constituent typically will be water. Preservatives may also be included to lengthen product life. Since many different commonly available cleansing solutions can also be employed in the invention, further details are not set forth therein. (Column 3, lines 40-45)

The SKIBA et al. reference teaches the presently claimed needle-punched cloth of rayon and polyester, and teaches the use cleansing solutions impregnated in the cloth. However, the reference is silent to the claimed "thermoretentive polymer" and the "formulation of thermoretentive mixtures of low to mid-melting point organic waxes."

McATEE et al. discloses a disposable personal cleaning article and teaches the use of nonwoven substrates made from synthetic materials such as an apertured hydroentangled material containing about 50% rayon and 50% polyester, and carded hydroentangled material, containing a fiber composition of from 50% rayon/50% polyester. The reference teaches

materials that can have a basis weight up to 115 gsy [4.01 ounces per yard squared]. (Refer to column 14, lines 54-67 through column 15, lines 1-46)

The reference teaches that the conditioning component of their invention may comprise a conditioning emulsion that is useful for providing a conditioning benefit to the skin during the use of the article. (Column 28, lines 63-67). The term "conditioning emulsion" means the combination of an internal phase comprising a water soluble conditioning agent that is enveloped by an external phase comprising an oil soluble agent. In preferred embodiments, the conditioning emulsion would further comprise an emulsifier. The conditioning emulsion comprises from about 0.25% to about 150%, by weight of the water insoluble substrate. (Column 29, lines 1-8)

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The reference also teaches the use of conditioning components from the group consisting of glycerin monoesters, glycerin polyesters, silicone oil, silicone gum, vegetable oil, natural waxes and synthetic waxes. (Refer to claim 8) The reference also teaches the use of mineral oil, stearyl alcohol, candelilla wax, silicone waxes. (Refer to claim 10) On paragraph 28, line 48; the reference also teaches the use of propylene glycol. Suitable fatty acid ester for use in their invention include ester waxes, monoglycerides, diglycerides and triglycerides. For example, beeswax. (Column 32, lines 49-55)

With regards to claim 12, ceresin wax is a mineral wax with a melting point from 61 to 78 degrees Fahrenheit. It is used as a substitute for Beeswax or Paraffin wax. It is known to be used in cosmetic creams.

Since both references are from the same field of endeavor, disposable personal cleaning cloths, the purpose disclosed by McATEE et al. would have been recognized in the pertinent art of SKIBA et al.. It is noted that while the McATEE et al.'s invention is directed to a personal cleaning article that needs to be wetted before using, the use of the formulations listed above would be recognized in the art of SKIBA et al. since they will provide the cleaning and conditioning benefits to the consumer upon being in solution once wetted.

It is further noted that the McATEE et al. reference teaches the use of components that would read on the "thermoretentive polymer" and the "thermoretentive organic waxes" of the present invention. The property of retaining heat or conducting heat in a formulation is inherent to the physical properties of the compounds constituting it, the fact that the McATEE et al. does not teach that these compounds are used in their invention for their "thermoretentive or thermoconductive" properties does not change the physical nature of these compounds.


It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the SKIBA et al. reference and provide it with the components taught by McATEE et al. with the motivation of providing the washcloth with a cleansing formulation that satisfy a number of criteria that is acceptable to consumers, including cleansing effectiveness, skin feel and mildness to skin as disclosed by McATEE et al. (Column 1, lines 51-55)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 703-306-5714. The examiner can normally be reached on Monday-Thursday 8:30-4:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

nlt
May 19, 2003


ELIZABETH M. COLE
PRIMARY EXAMINER